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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/903,769	07/13/2001	Laurence Sebillotte-Arnaud	210356US0	1466

22850 7590 05/05/2003

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EXAMINER

MRUK, BRIAN P

ART UNIT

PAPER NUMBER

1751

DATE MAILED: 05/05/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/903,769

Applicant(s)

SEBILLOTTE-ARNAUD ET AL.

Examiner

Brian P Mruk

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 14 February 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) 17-20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-16 and 21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4-5.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election with traverse of Group I, claims 1-16 and 21 in Paper No. 7 is acknowledged. The traversal is on the ground(s) that the suggestion by the examiner that the product of Group I can be used in a materially different process than the process of Group II is improper, since the examiner does not offer support for this suggested different use. However, the examiner respectfully asserts that the invention of Group I only requires a cleansing composition comprising the listed components, whereas the invention of Group II is drawn to a specific process of applying a composition to the skin, eyes, scalp and/or hair. Thus, the examiner asserts that prior art that would anticipate or render obvious claims 1-16 and 21 (i.e. Group I), would not necessarily anticipate or render obvious claims 17-20 (i.e. Group II). For instance, a composition for treating laundry or a hard surface which contains the components required in claims 1-16 and 21 would anticipate the invention of Group I, since a laundry or hard surface composition meets the "cleansing composition" requirements of instant claims 1-16 and 21. However, a laundry or hard surface composition would not anticipate or render obvious claims 17-20, since these compositions are not applied to the skin, eyes, scalp and/or hair, per the requirements of instant claims 17-20. Thus, both an undue examination burden and separate status in the art based on different classification do indeed exist. The examiner acknowledges applicant's request to rejoin the non-elected method claims of Group II upon finding the composition claims of Group

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I allowable. The examiner will rejoin the method claims of Group II at the time the composition claims of Group I are found allowable..

The requirement is still deemed proper and is therefore made FINAL.

2. This application contains claims 17-20 drawn to an invention nonelected with traverse in Paper No. 7. A complete reply to the final rejection must include cancelation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

### ***Priority***

3. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

### ***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-4, 6-8, 12-15 and 21 are rejected under 35 U.S.C. 102(b) as being anticipated by Dubief et al, U.S. Patent No. 5,824,296.

Dubief et al, U.S. Patent No. 5,824,296, discloses a shampoo composition comprising 3% by weight of an oxyethylenated lauryl alcohol sulphosuccinate, 8.4% by

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weight of sodium lauryl ether sulphate, 2% by weight of disodium cocoamphodiacetate, 2.1% by weight of palm/coconut glyceride, 24% by weight of AEROSIL R 972 (i.e. a pyrogenous silica of hydrophobic nature), preserving agents, fragrances, and water to balance (i.e. about 60% by weight of water), per the requirements of instant claims 1-4, 6-8, 12-15 and 21 (see col. 6, Comparative Example 2). The examiner asserts that the composition disclosed by Dubief et al would inherently meet the viscosity, and silica property requirements of instant claims 3 and 7, absent a showing otherwise.

Therefore, instant claims 1-4, 6-8, 12-15 and 21 are anticipated by Dubief et al, U.S. Patent No. 5,824,296.

6. Claims 1-13, 16 and 21 are rejected under 35 U.S.C. 102(b) as being anticipated by Uemura et al, EP 514,760.

Uemura et al, EP 514,760, discloses a composition for treating pores of the skin comprising 30% by weight of a polymethacryloyloxy ethyl trimethylammonium chloride, 5% by weight of polyethylene glycol 200, 1% by weight of polyoxyethylene hydrogenated castor oil 40 EO adduct), 1% by weight of squalane, 3% by weight of 1-hexyl-3-undecamethylhexasiloxane propynyl glycerol , 10% by weight of silica, 0.5% by weight of a perfume, an antiseptic, and water to balance (i.e. about 49% by weight of water), per the requirements of instant claims 1-13, 16 and 21 (see page 14, Table 6, Example 7). The examiner asserts that the composition disclosed by Uemura et al would inherently meet the viscosity, and silica property requirements of instant claims 3

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and 7, absent a showing otherwise. Therefore, instant claims 1-13, 16 and 21 are anticipated by Uemura et al, EP 514,760.

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 1-16 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Glenn, Jr. et al, WO 96/28140.

Glenn, Jr. et al, WO 96/28140, discloses a skin cleansing liquid composition comprising 0.5-10 parts by weight of a fumed silica having a particle size of 0.1-100 microns and a surface area of greater than 50 m<sup>2</sup> per gram (see page 5, lines 4-37), 30-80 parts by weight of water (see page 17, lines 5-11), 5-30 parts by weight of a lathering surfactant, such as alkyl ether sulfates, betaines, alkyl polyglucosides, and polyoxyethylene esters of fatty acids (see page 15, line 34-page 17, line 4), and optionally, 0.5-20% by weight of polyol, such as polyethylene glycol (see page 17, line 21-page 18, line 28). Although Glenn, Jr. et al generally discloses a skin cleansing liquid composition containing at least one oxyalkylenated compound, such as polyoxyethylene esters of fatty acids and polyethylene glycol, the reference does not

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require such skin cleansing liquid compositions containing these components with sufficient specificity to constitute anticipation.

It would have been obvious to a person of ordinary skill in the art at the time of the invention to have formulated a skin cleansing liquid composition, as taught by Glenn, Jr. et al, which contained at least one oxyalkylenated compound, such as polyoxyethylene esters of fatty acids and polyethylene glycol, because such skin cleansing liquid compositions fall within the scope of those taught by Glenn, Jr. et al. Therefore, one of ordinary skill in the art would have had a reasonable expectation of success, because such a skin cleansing liquid composition containing at least one oxyalkylenated compound, such as polyoxyethylene esters of fatty acids and polyethylene glycol, is expressly suggested by the Glenn, Jr. et al disclosure and therefore is an obvious formulation.

9. Claims 1-16 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Glenn, Jr. et al, U.S. Patent No. 6,277,797.

Glenn, Jr. et al, U.S. Patent No. 6,277,797, discloses a skin cleansing liquid composition comprising 0.5-10 parts by weight of a fumed silica having a particle size of 0.1-100 microns and a surface area of greater than 50 m<sup>2</sup> per gram (see col. 4, lines 4-49), 30-80 parts by weight of water (see col. 12, lines 43-64), 5-30 parts by weight of a lathering surfactant, such as alkyl ether sulfates, betaines, alkyl polyglucosides, and polyoxyethylene esters of fatty acids (see col. 10, line 44-col. 12, line 41), and optionally, 0.5-20% by weight of polyol, such as polyethylene glycol (see col. 12, line

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65-col. 13, line 37). Although Glenn, Jr. et al generally discloses a skin cleansing liquid composition containing at least one oxyalkylenated compound, such as polyoxyethylene esters of fatty acids and polyethylene glycol, the reference does not require such skin cleansing liquid compositions containing these components with sufficient specificity to constitute anticipation.

It would have been obvious to a person of ordinary skill in the art at the time of the invention to have formulated a skin cleansing liquid composition, as taught by Glenn, Jr. et al, which contained at least one oxyalkylenated compound, such as polyoxyethylene esters of fatty acids and polyethylene glycol, because such skin cleansing liquid compositions fall within the scope of those taught by Glenn, Jr. et al. Therefore, one of ordinary skill in the art would have had a reasonable expectation of success, because such a skin cleansing liquid composition containing at least one oxyalkylenated compound, such as polyoxyethylene esters of fatty acids and polyethylene glycol, is expressly suggested by the Glenn, Jr. et al disclosure and therefore is an obvious formulation.



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10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian Mruk whose telephone number is (703) 305-0728. The examiner can normally be reached on Monday-Thursday from 7:00 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta, can be reached on (703) 308-4708. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9310 (Before Final) and (703) 872-9311 (After Final).

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

Bm

Brian Mruk  
April 18, 2003

*Brian P. Mruk*

Brian P. Mruk  
Patent Examiner  
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